IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.457 OF 2005

Yousuf Khan Ibrahim Khan ... Petitioner

versus

State of Maharashtra ... Respondent

...

Mr.Arfan Sait, for the Petitioner.

Mr.V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

24th March 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondent. As short point is involved, petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the order passed by the Deputy Inspector-General of Prisons, Western Zone, dated 28th April 2004 as well as dated 27th October 2004 rejecting the Petitioner's request for furlough leave. The first order was passed on the application preferred by the Petitioner, whereas the later was passed on the application filed by the Petitioner's wife. Mr. Sait, for the Petitioner, fairly accepts that the second application was not maintainable in law. As such, it is not necessary to examine the correctness of that order. He further submits that it is open to the Petitioner to question the correctness of the order dated 28th April 2004 passed by the competent authority.

. The singular reason recorded by the competent authority to reject the Petitioner's request for furlough leave is that the Petitioner will not be under the control of the surety and is likely to flee, if released. This ground is recorded on the basis of report submitted by the concerned police. Mr. Sait has invited my attention to the Leave Information Status Report

of the Petitioner, which is on record, to contend that the ground which has weighed with the competent authority cannot be sustained. Inasmuch as the Petitioner was released on furlough leave on the earlier occasion and he availed of the said leave for the period between 22nd February 2002 to 14th March 2002 and surrendered within time. Learned A.P.P., however, submits that later on, when the Petitioner was released on parole, he did not surrender in time and came to be arrested by the police after 29 days from the last date of surrender.

. Indeed, the submission canvassed by the learned A.P.P. is supported by the record, but the same overlooks the fact that the Petitioner has already been punished for the overstay of parole period. Suffice it to observe that the ground stated by the competent authority cannot be accepted having regard to the fact that the Petitioner was released on furlough leave on the earlier occasion, as well as on parole leave on the second occasion. To overcome the apprehension expressed by the Department that the

Petitioner is likely to flee, strict condition can be imposed on the Petitioner, which will meet the ends of justice. This is so, because the surety for the Petitioner is none other than his real brother and is permanent resident of Shivaji Nagar, Pune.

. Accordingly, this petition succeeds with direction to the competent authority to forthwith release the Petitioner on furlough leave as per rules, on condition that the Petitioner shall report to the concerned Police Station (Khadaki Police Station) daily between 5 p.m. to 7 p.m. The Petitioner shall surrender passport, if any, with the investigating officer. In case he does not possess any passport, that fact will be stated on affidavit to be filed before the jail authorities.

. Petition allowed on the above terms.

. Copy of this order be forwarded to the Petitioner as the petition is through jail.

. Court records word of appreciation for

Mr. Sait for his able assistance as amicus curiae.

(A.M.KHANWILKAR,J.)